

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2271 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE D.A.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

ORIENTAL INSURANCE CO LTD.

Versus

RAHEMTULLA ABDULLA RATHOD

Appearance:

MR KK NAIR for appellant.

Mr.M.S.Shah for

MR SURESH M SHAH for contesting Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE D.A.MEHTA

Date of decision: 08/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

Heard learned counsel.

Admit. Mr. M.S.Shah waives service on behalf of respondent No.1. As has been agreed and submitted on behalf of both the sides present before the Court, other respondents need not be served since they are formal parties for the purpose of this Appeal.

On the joint request of the learned counsel for the appellant and respondent No.1, the main Appeal is taken up for final disposal right today.

This Appeal under Sec.173 of the Motor Vehicles Act is against the order passed below Exh.6 under Sec.163A of the Motor Vehicles Act in M.A.C.P.No.92/99 by the Motor Accident Claims Tribunal, Kachchh at Bhuj. The Motor Accident Claims Tribunal (Main), Kachchh at Bhuj has passed the impugned order on 19.4.2000 holding that the original petitioner i.e. the claimant will be entitled to get Rs.4,62,000/- with running interest at the rate of 12% per annum from the date of the application till deposit. The said amount was directed to be deposited within one month from the date of the order i.e. 19.4.2000. It was further ordered that out of the amount together with interest that may be deposited with the Tribunal, deficit amount of Court fees, if any, may be deducted first and out of the remaining amount of interim compensation, 35% amount shall be paid to the original claimant by Crossed Account Payee Cheque and the remaining 65% amount of interim compensation shall be deposited in Fixed Deposit in the name of the claimant in any Scheduled Bank for a period of 6 years on the terms and conditions as are mentioned in the impugned order dated 19.4.2000 passed by the M.A.C.Tribunal (Main), Kachchh at Bhuj.

The present order which is sought to be impugned in this Appeal by the appellant - Insurance Company is an award under Sec.163A of the Motor Vehicles Act in the nature of interim award and there is no dispute that it has been passed below Exh.6 in the main petition i.e. M.A.C.P.No.92/99. The main claim petition is yet to be heard and decided on merits. The present impugned order is obviously subject to adjustment against the final award that may be passed in the main claim petition. It has been submitted that Appeals of this nature have already been decided by the Division Bench of this Court in more than one cases and Mr. M.S.Shah has also produced a copy of such order passed in First Appeal No.7565/99 decided on 21.12.99. We accordingly decide this Appeal with the directions as under:-

- (i) The respondent-original claimant shall file an undertaking before the Tribunal within four weeks stating therein that it would pursue the main claim petition and obtain a judgment and award on merits and that it shall not permit the claim petition to be dismissed for default nor it would withdraw the same.
- (ii) The amount of Rs.25,000/- deposited by the appellant with the Registry at the time of filing the Appeal shall be transmitted to the Motor Accident Claims Tribunal, Kachchh at Bhuj forthwith i.e. latest by 30.11.2000. The present appellant is directed to deposit with the Tribunal an aggregate amount due (i.e. minus the amount of Rs.25,000/- already deposited) under the order together with costs and interest within six weeks from today. On such deposit being made, the respondent - claimant shall be entitled to withdraw 35% of the deposited amount and the balance of 65% shall be invested by the Tribunal in a Fixed Deposit with any Scheduled Bank initially for a period of 3 years and on maturity it shall be renewed by one year at a time without any further orders in this regard. The original claimant - respondent No.1 herein shall be entitled to withdraw the periodical interest, which may accrue on such deposit.

It will be open for both the sides to raise all factual as well as legal submissions as and when the main claim petition is heard by the concerned Tribunal because this Appeal is directed against the interim order only.

Subject to the aforesaid observations and directions, this Appeal is hereby dismissed. No order as to costs.

Record and proceedings may be sent back to the concerned Tribunal forthwith.

(M.R.Callan,J)

(D.A.Mehta,J)